118

No. 08-972

Supreme Court, U.S
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In the Supreme Court of the United States

WENDELL RAY HOLLOWAY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Appeal to the United States Court of Appeals for the Sixth Circuit Case No. 07-2255 From the United States Tax Court Docket No. 8779-06"L"

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the United States Tax Court and the United States District for the Sixth Circuit had jurisdiction to uphold a Notice of Intent to Levy on a historic farm residence, historic farmland, historic family cemetery, and business assets of the Petitioner when the Notice of Intent to Levy must be approved in writing by a United States District Judge or Magistrate and the United States District Court has exclusive jurisdiction to approve a levy in writing?

2. Whether on May 31, 2005 an Internal Revenue Service Officer had the authority to send to the Petitioner a Notice of Intent to Levy aimed at a historic farm residence, historic farm land used in farming that included a historic family cemetery dating back to the early 1800s without the Notice of Intent to Levy being approved in writing by a United States District Judge or Magistrate Judge?

3. Whether or not on May 31, 2005 an Internal Revenue Service Officer had the authority to send a Notice of Intent to Levy aimed at business assets of the Petitioner used in trade or business that was not approved in writing by a District Director or Assistant District Director of the Internal Revenue Service?

4. Whether there was an abuse of discretion by the Respondent's Settlement Officer and a denial of due process of law when the Settlement Officer conducted a collection due process hearing on March 15, 2006 reading two pages of handwritten notes to conduct the hearing who certified and verified at the hearing that all applicable law had been complied with that would include the Notice of Intent to Levy sent on May 31, 2005 that was not approved in writing by a United States District Judge or Magistrate Judge and refused to allow the Petitioner to raise any issues including Innocent Spouse, offer and compromise, and pay-

ment plan other than the issue of collection and that the Petitioner had sufficient property and the Petitioner did not qualify for an offer and compromise when the property and the seizure of property was the historic farm residence, historic farmland, and historic family cemetery that the Revenue Officer focused on, and the Appeals Office in its Notice of Determination clearly identified the two-story home and 108 acres that far exceeds the amount of the liability in question?

5. Whether the Innocent Spouse Determination by the Respondent denied the Petitioner due process of law by not giving the Petitioner notice as required and renders the Innocent Spouse Determination by the Respondent void and unenforceable against the Petitioner when the Petitioner was not a party and the Notice of Determination arbitrarily creates a Notice date of June 4, 2004 that does not exist?

6. Whether or not as a matter of evidence the Respondent can enforce and collect any amount of tax when a records custodian or any other person in authority did not testify to authenticate any amount of tax under the Federal Rules of Evidence?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS .. 1

STATEMENT OF THE CASE 1
Factual Background 1

SUMMARY OF ARGUMENTS 5

ARGUMENT 5

I. ON MAY 31, 2005 THE INTERNAL REVENUE OFFICER DID NOT HAVE THE AUTHORITY TO SEND TO THE PETITIONER A NOTICE OF INTENT TO LEVY AIMED AT A HISTORIC FARM RESIDENCE, HISTORIC FARMLAND USED IN FARMING, THAT INCLUDED A HISTORIC FAMILY CEMETERY DATING BACK TO THE EARLY 1800S WITHOUT THE NOTICE OF INTENT TO LEVY BEING APPROVED IN WRITING BY A UNITED STATES DISTRICT JUDGE OR MAGISTRATE JUDGE. ON MAY 31, 2005 THE INTERNAL REVENUE SERVICE OFFICER DID NOT HAVE THE AUTHORITY TO SEND A NOTICE OF INTENT TO LEVY AIMED AT BUSINESS ASSETS OF THE PETITIONER USED IN TRADE OR BUSINESS THAT WAS NOT APPROVED IN WRITING BY A DISTRICT DIRECTOR OR ASSISTANT DISTRICT DIRECTOR OF THE INTERNAL REVENUE SERVICE. THE UNITED STATES TAX COURT DID NOT HAVE JURISDICTION TO UPHOLD THE NOTICE OF DETERMINATION BY THE RESPON-

DENT ON APRIL 13, 2006. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DID NOT HAVE JURISDICTION TO UPHOLD THE UNITED STATES TAX COURT BECAUSE THE EXCLUSIVE JURISDICTION TO APPROVE SUCH A LEVY IS IN THE DISTRICT COURTS OF THE UNITED STATES AND THERE WAS NO APPROVAL IN WRITING BY A UNITED STATES DISTRICT JUDGE OR MAGISTRATE OR A DISTRICT DIRECTOR OR ASSISTANT DISTRICT DIRECTOR OF THE INTERNAL REVENUE SERVICE. 5

II. THE RESPONDENT CANNOT ENFORCE AND COLLECT ANY AMOUNT OF TAX WHEN A RECORD'S CUSTODIAN OR OTHER QUALIFIED PERSON IN AUTHORITY DID NOT TESTIFY TO AUTHENTICATE ANY AMOUNT OF TAX UNDER THE FEDERAL RULES OF EVIDENCE..... 9

III. THERE WAS AN ABUSE OF DISCRETION BY THE SETTLEMENT OFFICER AND A DENIAL OF DUE PROCESS OF LAW WHEN THE SETTLEMENT OFFICER CONDUCTED A COLLECTION DUE PROCESS HEARING READING TWO PAGES OF HANDWRITTEN NOTES AND REFUSING TO ALLOW THE PETITIONER TO RAISE ANY ISSUES EXCEPT THE ISSUE OF COLLECTION OF MONEY AND DENIED INNOCENT SPOUSE AND SPOUSAL DEFENSES, OFFER AND COMPROMISE, AND PAYMENT PLAN..... 10

IV. THE INNOCENT SPOUSE DETERMINATION MADE BY THE RESPONDENT DENIED THE PETITIONER DUE PROCESS OF LAW BY NOT GIVING THE PETITIONER DUE PROCESS NOTICE AS REQUIRED AND RENDERS THE INNOCENT

SPOUSE DETERMINATION BY THE RESPONDENT NULL, VOID AND UNENFORCEABLE AGAINST THE PETITIONER WHEN THE PETITIONER WAS NOT A PARTY. 12

CONCLUSION 13

APPENDIX

Order, United States District Court for Sixth Circuit, May 5, 2008

Order denying Petition for rehearing, July 22, 2008

Memorandum Opinion by US Tax Court, July 3, 2007

Decision by US Tax Court, July 6, 2007

Notice of Determination by Appeals, April 13, 2006

Petitioner's Exhibit 22P Settlement Officer, Danny Williams' hand written notes used to conduct the Collection Due Process Hearing on March 15, 2006 without a file.

Notice of Appeal, Challenge and Objection, Request for Production of Documents, Demand for Hearing and Judicial Review, and Counterclaim and Offset and to Dismiss Notice by the Petitioner

Final Notice of Intent to Levy, May 31, 2005

TABLE OF CITED AUTHORITIES

Page

Federal Cases

Anderson v. Westinghouse 407 F 3d 248. 12

Cleveland Bd. Of Ed. V. Loudermill 470 U.S. 532, 105.S.C.t. 1487 (1985). 11

Curcio v. United States, 354 U.S. 118, 77 S.Ct. 1145, 1 L.Ed.2d 1225 (1957) 9

Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), 235, 237, 246 10

Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975), 237, 245, 246, 248 10

Mathews v. Eldridge, 424 U.S. 319, 96 S.C.t. 893, 47 L.E.d.2d 18 (1976) 10

Mullane v. Central Hanover Bank & Trust, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), 250 ..... 10, 11

United States V. Rodgers 461 US 677, 103 S. Ct 2132 (1983) 8

Variety Distributing Inc., 927 F.2d 244 (6th Cir. 1991) 9

Federal Rules of Evidence

Federal Rule of Evidence 803 (6) 9

Federal Rule of Evidence 901(a) 9

Forms

Form 886-A 11

Federal Statutes

28 USC Section 1257(A) 1

Section 6334 ..... 6, 8

Section 6334(a)(13)(B)(i) 6

Section 6334(a)(13)(B)(ii) 6

Section 6334(e) 7

Subsection (a)(13)(B) 7

United States Constitution Amendments

Fifth Amendment 1

Fourteenth Amendment 1

JURISDICTION

The Petitioner invokes this Court's Certiorari Jurisdiction pursuant to 28 USC Section 1257 (A) to challenge the arbitrary collection tactics of the Respondent in total disregard of due process and law.

CONSTITUTIONAL AND STATUTORY PROVISIONS

If the Notice of Intent to Levy sent by a Revenue Officer on May 31, 2005 is allowed to proceed this will be a taking of the Petitioner's property in violation of the Fifth Amendment and Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

Factual Background

This is a Petition for a Writ of Certiorari to the Supreme Court of the United States by Wendell Ray Holloway, the Petitioner and owner of historic farmland, a historic farm residence, a historic family cemetery, all dating back to the early 1800s and the owner of business assets used in business including an office building. The tax issue and claim was caused by the Innocent Spouse. The Petitioner had to sell two cattle herds valued at One Hundred Thousand Dollars ($100,000.00) to meet the demands of the Innocent Spouse. The cattle herds had always been used to pay taxes:

On May 31, 2005 an Internal Revenue Service Revenue Officer sent to the Petitioner a Notice of Intent to Levy primarily aimed at a historic farm home, and historic farmland used in farming, that included a historic family cemetery dating back to the early 1800s. The Revenue Officer herself had threatened to seize the property that included the historic farmland, historic farm residence, and historic family cemetery herself. The Revenue Officer had told the Petitioner that he was not eligible for a payment plan or offer and compromise because he had sufficient equity in this property. The Revenue Officer also stated that the ex-wife had been granted Innocent Spouse relief. The Notice of Intent to Levy by the Revenue Officer may include all self-employed assets of the Petitioner including his office equipment and office building. The Notice of Intent to Levy on the historic farmland, and the historic farm home was not approved in writing by a United States District Judge or Magistrate. The District Courts of the United States have exclusive jurisdiction to approve a Levy of a principal farm residence. The District Director or Assistant District Director of the Internal Revenue Service did not approve in writing a Levy on other business assets.

The Petitioner timely filed a Request for Collection Due Process Hearing challenging the Notice of Intent to Levy by the Revenue Officer and stating that there is no IRS Code, Statute, or Order that is authority for the Final Notice of Intent to Levy dated May 31, 2005. Sending the notice dated May 31, 2005 is arbitrary and not supported by statutes, code, or law.

On March 15, 2006 a Settlement Officer for the purposes of collection and not an Appeals Officer conducted the Collection Due Process Hearing using and reading to the Petitioner two pages of handwritten notes. The Settlement Officer had to verify and certify in conducting the Collection Due Process Hearing that all laws had been complied with

before conducting the hearing that would include the Notice of Intent to Levy. The Settlement Officer absolutely had to know the requirements and law on sending the Notice of Intent to Levy prior to conducting the Collection Due Process Hearing that he did not know. The conducting of the Collection Due Process Hearing itself was arbitrary and an abuse of discretion and in total violation and disregard of law and a denial of due process of law to the Petitioner. The Settlement Officer would not allow the Petitioner to raise any issue other than the collection of money. The Settlement Officer would not allow any offer or compromise or payment plan because the Petitioner owned the historic farmland, the historic farm residence, and the historic farm cemetery that had sufficient equity to pay any tax that was the opinion of the Revenue Officer. The Settlement Officer would not allow the Petitioner to raise any issue on Innocent Spouse and there was no testimony on Innocent Spouse even though the Notice in a Collection Due Process Hearing guarantees the Petitioner the right to raise spousal defenses. The Revenue Officer had obtained a computerized document dated July 23, 2003 that was when the ex-spouse had filed for Innocent Spouse Determination and this computerized document was the only document the Settlement Officer had regarding the Innocent Spouse Determination. The Settlement Officer had no information on the Final Innocent Spouse Determination or any other claimed notices and the Innocent Spouse Determination was made in a separate Innocent Spouse Unit when the Petitioner was not a party and did not have Notice of the Final Innocent Spouse Determination.

The Appeals Office of the Respondent made a Notice of Determination on April 13, 2006. The proposed levy action was for the years 1999, 2000, and 2001 that appeals deemed appropriate and it was sustained. It was determined the Petitioner had unencumbered real property consisting of the historic farmland with a two-story residence that exceeded the amount of the liability in question and

determined that the Petitioner did not have the ability to make installment payments and that an offer and compromise was not a viable collection alternative since the Petitioner had more than sufficient equity in his assets to pay the liability. The amount of the claim for taxes for the years 1999, 2000 and 2001 is about Ten Thousand Dollars ($10,000.00) per year but Appeals states that the Petitioner owes Eighty Thousand Six Hundred Ninety-Six Dollars and Eighty-Six Cents ($80,696.86) in the brief background that is totally erroneous. The Sixth Circuit Order of May 5, 2005 states that the amount for 1999 is Ten Thousand Eight Hundred Ninety-Six Dollars and Seventy-Two Cents ($10,896.72), for 2000 is Eleven Thousand One Hundred Twenty-Seven Dollars ($11,127.00) and 2001 is Eleven Thousand Nine Hundred Sixty-Nine Dollars ($11,969.00) or Forty-Six Thousand Seven Hundred Four Dollars ($46,704.00 difference. Appeals also states that the Petitioner was notified on June 4, 2004 of the decision to grant Innocent Spouse Relief to your ex-wife but there is no indication you filed a protest regarding that. There is no evidence anywhere that the Petitioner was notified on June 4, 2004 and the Respondent does not have any such notice. There was no testimony or evidence at the collection due process hearing regarding any date of June 4, 2004. This is no more than arbitrary and made up by Appeals to try to justify the Innocent Spouse Determination. The United States Tax Court in memorandum opinion dated July 3, 2007 and order entered July 6, 2007 upheld the Respondent's Notice of Determination.

The Unites States Court of Appeals for the Sixth Circuit by Order dated May 5, 2008 upheld the Notice of Determination and upheld the Memorandum Opinion of the United States Tax Court. The United States Court of Appeals for the Sixth Circuit by Order dated July 22, 2008 denied the Petitioner's Petition for Rehearing. The Petitioner timely filed a Petition for Writ of Certiorari.

SUMMARY OF ARGUMENTS

The Revenue Officer did not have authority to send a Notice of Intent to Levy on May 31, 2005 because the Notice of Intent to Levy on a historic family residence, historic farmland and a historic family cemetery and business assets had to be approved in writing by a United States District Judge or Magistrate Judge that had exclusive jurisdiction. The Settlement Officer did not have authority and jurisdiction to conduct a Collection Due Process Hearing because he had not verified and certified correctly that all applicable laws had been complied with prior to conducting the Collection Due Process Hearing that would have required the Notice of Intent to Levy being approved in writing by a United States District Judge or United States Magistrate Judge. The Collection Due Process Hearing and the Notice of Determination on April 13, 2006 is an abuse of discretion, null and void, a denial of due process of law, and in disregard of applicable law. The Memorandum, Opinion and Order of the United States Tax Court that is affirmed by the Order of the United States Court of Appeals for the Sixth Circuit is null and void, without jurisdiction, and in disregard of law.

ARGUMENT

I. ON MAY 31, 2005 THE INTERNAL REVENUE OFFICER DID NOT HAVE THE AUTHORITY TO SEND TO THE PETITIONER A NOTICE OF INTENT TO LEVY AIMED AT A HISTORIC FARM RESIDENCE, HISTORIC FARMLAND USED IN FARMING, THAT INCLUDED A HISTORIC FAMILY CEMETERY DATING BACK TO THE EARLY 1800S WITHOUT THE NOTICE OF INTENT TO LEVY BEING APPROVED IN WRITING BY A UNITED STATES DISTRICT JUDGE OR MAGISTRATE JUDGE.

ON MAY 31, 2005 THE INTERNAL REVENUE SERVICE OFFICER DID NOT HAVE THE AUTHORITY TO SEND A NOTICE OF INTENT TO LEVY AIMED AT BUSINESS ASSETS OF THE PETITIONER USED IN TRADE OR BUSINESS THAT WAS NOT APPROVED IN WRITING BY A DISTRICT DIRECTOR OR ASSISTANT DISTRICT DIRECTOR OF THE INTERNAL REVENUE SERVICE. THE UNITED STATES TAX COURT DID NOT HAVE JURISDICTION TO UPHOLD THE NOTICE OF DETERMINATION BY THE RESPONDENT ON APRIL 13, 2006. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DID NOT HAVE JURISDICTION TO UPHOLD THE UNITED STATES TAX COURT BECAUSE THE EXCLUSIVE JURISDICTION TO APPROVE SUCH A LEVY IS IN THE DISTRICT COURTS OF THE UNITED STATES AND THERE WAS NO APPROVAL IN WRITING BY A UNITED STATES DISTRICT JUDGE OR MAGISTRATE OR A DISTRICT DIRECTOR OR ASSISTANT DISTRICT DIRECTOR OF THE INTERNAL REVENUE SERVICE.

Section 6334 (Property Exempt From Levy) of the Internal Revenue Code provides in Section 6334(a)(13)(B)(i) and (ii) that the principal residences and certain business assets used in trade or business of the taxpayer are exempt as follows:

> 6334(a)(13)(B)(i) the principal residence of the taxpayer is exempt.
>
> (ii) Tangible personal property or real property used in the trade or business of the individual taxpayer is exempt.

Section 6334(e) provides for approval of a levy on principal residence and certain business assets as follows:

Section 6334(e) Levy allowed on principal residences and certain business assets in certain circumstances.

(1) Principal Residences

(A) Approval Required

A principal residence shall not be exempt from levy if a judge or magistrate of the district court of the United States approves in writing the levy of such residence.

(B) Jurisdiction

The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

(2) Certain Business Assets

Property other than a principal residence described in Subsection (a)(13)(B) shall not be exempt from levy if

(A) A district director or assistant district director of the Internal Revenue Service personally approves in writing the levy of such property.

An official may not approve a levy under subparagraph (A) unless the official determines that the taxpayer's other assets subject to col-

> lection are insufficient to pay the amount due, together with the expenses of the proceedings.

The Notice of Intent to Levy absolutely had to be approved in writing by a United States District Judge or Magistrate on all residences. The Director or Assistant Director of the Internal Revenue Service had to approve in writing any levy on the Petitioner's business assets. Certiorari is required to prevent abuse by the Respondent. The Petitioner filed a Request for a Collection Due Process Hearing on June 29, 2005 that included a Notice of Appeal, Challenge and Objection, and to dismiss the Notice. The Petitioner in paragraph 11 of the Request challenged that there was no IRS code, statute, or order that is authority for the Final Notice dated May 31, 2005. Sending the Notice dated May 31, 2005 is arbitrary and not supported by statute, code, or law. In paragraph 12 the Petitioner challenged that the Innocent Spouse Determinations as determined by the IRS are unconstitutional and contrary tc law, do not grant due process to the adverse party and are unenforceable against the adverse party as the taxpayer in this case. The Petitioner challenged in paragraph 13 that the Internal Revenue Service did not have any personal jurisdiction over this taxpayer and did not have any subject matter jurisdiction to make any determination. Pursuant to this challenge the Respondent did partially dismiss years 2003 and 2004 but did not dismiss the claim for the years 1999, 2000, and 2001. This challenge was made by the Petitioner on June 29, 2005. The Respondent, Tax Court, and the Sixth Circuit are bound by the mandate and law in Section 6334(property exempt from levy).

The power to order the sale of a historic family residence is in the Federal District Court and must be approved by the United States District Court. United States V. Rodgers 461 US 677, 103 SCT 2132 (1983). The Revenue

Officer had absolutely no authority to send the Notice of Intent to Levy to the Petitioner on May 31, 2005.

II. THE RESPONDENT CANNOT ENFORCE AND COLLECT ANY AMOUNT OF TAX WHEN A RECORD'S CUSTODIAN OR OTHER QUALIFIED PERSON IN AUTHORITY DID NOT TESTIFY TO AUTHENTICATE ANY AMOUNT OF TAX UNDER THE FEDERAL RULES OF EVIDENCE.

The Revenue Officer did not testify and the Respondent had no witnesses. The position of the Respondent is by stipulation. The stipulation clearly stated as follows:

The parties are not hereby stipulating to the truth and accuracy of any statements made in the documents attached hereto as exhibits.

There are no signed authenticated tax returns for the year 1999, 2000 and 2001 in evidence. A Records Custodian or other qualified person of the Respondent had to testify to authenticate the administrative file of the Respondent, to identify documents as being legitimate and representing any amounts, and to bring the documents in the administrative file within the business record exception to the hearsay rule under Federal Rule of Evidence 803 (6) and to authenticate the administrative records under Federal Rule of Evidence 901(a), Variety Distributing Inc., 927 F.2d 244 (6th Cir. 1991), Curcio v. United States, 354 U.S. 118, 77 S.Ct. 1145, 1 L.Ed.2d 1225 (1957). There is no correct finding anywhere of any amount of tax due and owing supported by creditable evidence.

The claim is for the year 1999, 2000, and 2001 that is time barred.

III. THERE WAS AN ABUSE OF DISCRETION BY THE SETTLEMENT OFFICER AND A DENIAL OF DUE PROCESS OF LAW WHEN THE SETTLEMENT OFFICER CONDUCTED A COLLECTION DUE PROCESS HEARING READING TWO PAGES OF HANDWRITTEN NOTES AND REFUSING TO ALLOW THE PETITIONER TO RAISE ANY ISSUES EXCEPT THE ISSUE OF COLLECTION OF MONEY AND DENIED INNOCENT SPOUSE AND SPOUSAL DEFENSES, OFFER AND COMPROMISE, AND PAYMENT PLAN.

The Settlement Officer erroneously verified and determined that all applicable law had been met prior to conducting the collection due process hearing. This rendered the Collection Due Process Hearing null and void as well as the Notice of Determination by Appeals. The Settlement Officer concentrated on the historic family residence, historic farmland, and historic cemetery the same as the Revenue Officer that was the basis for the determination that the Petitioner was not entitled to an offer and compromise and payment plan. The failure of the Settlement Officer to determine that the Notice of Intent to Levy had to be approved in writing by a United States District Judge or Magistrate Judge and the District Director or Assistant District Director of the Internal Revenue Service was in clear violation of law and disregard of law and the reading by the Settlement Officer of two pages of handwritten notes to the Petitioner to conduct the Collection Due Process Hearing is in itself an abuse of discretion and it is a denial to the Petitioner of a Due Process Hearing and is a denial of due process of law to the Petitioner. Mathews v. Eldridge, 424 U.S. 319, 96 S.C.t. 893, 47 L.E.d.2d 18 (1976), Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), 235, 237, 246, Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975), 237, 245, 246, 248, Mullane v. Central

Hanover Bank & Trust, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), 250, Cleveland Bd. Of Ed. V. Loudermill 470 U.S. 532, 105.S.C.t. 1487 (1985).

The Settlement Officer would not allow the Petitioner to raise the issue of Innocent Spouse at the CDC Hearing. The Notice of Determination discusses Innocent Spouse and makes findings that were never brought up at the hearing. Specifically the Notice of Determination states that a review of the administrative case file indicates you were notified by the IRS on July 23, 2003 that your ex-wife had filed an Innocent Spouse claim and you were given an opportunity to participate in that process. There is no indication you responded or replied to this letter. The July 23, 2003 computer generated form letter is the only document the Revenue Officer or the Settlement Officer knew anything about. The Revenue Officer and the Settlement Officer did not have and did not know about the Innocent Spouse Determination that was discovered by the Petitioner on January 17, 2007 just prior to trial was made on June 29, 2004 and July 1, 2004. The Notice of Determination states that the Petitioner was notified on June 4, 2004 of the decision to grant Innocent Spouse Relief to your ex-wife but there is no indication you filed a protest regarding that. This date of June 4, 2004 does not exist anywhere in any Exhibit or any computer generated form and it clearly was not even known by the Settlement Officer. The inserting of this finding in the Notice of Determination that the Petitioner was notified on June 4, 2004 is perjury by the Settlement Officer and by the Appeals Team Manager and is falsified evidence at a minimum. The Petitioner had to be given at least 60 days notice prior to any final determination regarding Innocent Spouse to allow the Petitioner time to protest and intervene in a proceeding that was not done. Form 886-A of the Respondent requires that the Petitioner who was not a party be given 60 days notice to 90 days notice prior to any final determination. This clearly

was an abuse of discretion and a denial of due process and the date of June 4, 2004 is not supported by any evidence of any kind. Anderson v. Westinghouse 407 F 3d 248.

IV. THE INNOCENT SPOUSE DETERMINATION MADE BY THE RESPONDENT DENIED THE PETITIONER DUE PROCESS OF LAW BY NOT GIVING THE PETITIONER DUE PROCESS NOTICE AS REQUIRED AND RENDERS THE INNOCENT SPOUSE DETERMINATION BY THE RESPONDENT NULL, VOID AND UNENFORCEABLE AGAINST THE PETITIONER WHEN THE PETITIONER WAS NOT A PARTY.

The cause of the tax claim in this case is the Innocent Spouse. The Petitioner had two cattle herds appraised at One Hundred Thousand Dollars ($100,000.00) that had always been used to pay taxes. These cattle herds had to be sold in the year 2000 to meet the demands of the ex-wife who had filed for divorce. The Innocent Spouse Determination was not part of the administrative file in this case. The Innocent Spouse Determination allegedly was made in a separate Innocent Spouse Unit. The basis by the Revenue Officer and the Settlement Officer that the Innocent Spouse Determination is enforceable against the Petitioner is based upon a computer-generated form letter dated July 23, 2003 that the Respondent contends notifies the Petitioner that the Innocent Spouse has filed for Innocent Spouse Relief. The Revenue Officer and the Settlement Officer did not have any order or any determination signed by any person in authority that an Innocent Spouse Determination had been made. On January 17, 2007 the Petitioner was produced a certified letter dated June 29, 2004 and a certified letter dated July 1, 2004 notifying the ex-wife that she had been granted Innocent Spouse Relief. It is an absolute requirement that the Petitioner must be given 60 days to 90 days notice prior to July 1, 2004 to allow the Peti-

tioner time to protest and to intervene in the Innocent Spouse Determination. There is no computerized form letter, exhibits, or any contention that the Petitioner was granted a 60-day or 90-day notice and is procedurally required and mandated by the Respondent's own regulations. The Petitioner was not a party. The Respondent does not have any notice to the Petitioner. The Respondent in the Notice of Determination attempts to create and fabricate a notification dated June 4, 2004 of a decision to grant Innocent Spouse Relief that does not exist. This date of June 4, 2004 in an attempt to claim notice to the Petitioner by the Settlement Officer and the Appeals Team Manager that is perjury, falsified evidence, and a fraud on the Petitioner but more important it is an arbitrary denial of due process of law, clear error, and renders the Innocent Spouse determination by the Respondent null, void and unenforceable against the Petitioner.

The Sixth Circuit Order of May 5, 208 states on page 2 that notice was sent to the Petitioner after the decision had been made.

CONCLUSION

A United States District Court Judge or Magistrate had to approve in writing the Notice of Intent to Levy sent to the Petitioner on May 31, 2005 by a Revenue Officer as it pertains to the historic farm residence, historic farmland, and historic cemetery and all business assets. A District Director or Assistant District Director of the Internal Revenue Service had to approve in writing the Notice of Intent to Levy on May 31, 2005 that pertains to business assets of the Petitioner used in trade or business that was not done. There is a clear abuse of discretion and denial of due process of law by the Settlement Officer and by the Notice of Determination by the Appeals Team Manager. The tactic by the Respondent of fabricating the date of June 4, 2004 as

a date of notice to the Petitioner of Innocent Spouse Determination is perjury by the Settlement Officer and the Appeals Team Manager, falsified evidence and a fraud. This fabrication in itself and the lack of 60- day to 90-day notice prior to a Final Innocent Spouse Determination being made on July 1, 2004 renders any Innocent Spouse Determination null, void and unenforceable against the Petitioner. The tactics and acts of the Respondent that is an abuse by the Respondent and in total disregard of law and the individual rights of taxpayers and the rights of property owners and fails to meet the requirements of due process in collection due process hearings and the Innocent Spouse Determinations and in collection practices that apparently is taking place every day on a national basis. In this case if the Notice of Intent to Levy by the Revenue Officer is allowed then this will be a taking of property without due process of law and in disregard of law. The United States Tax Court and the United States Court of Appeals for the 6th Circuit did not have jurisdiction to uphold the acts and tactics of the Respondent at the Collection Due Process Hearing and in the Notice of Determination that was all brought about by the Notice of Intent to Levy on May 31, 2005 that had to be approved in writing by a United States District Judge or Magistrate. The Petition for Writ of Certiorari should be granted for the reasons set forth herein and to restrain and stop the tactics of the Respondent that is illegal and is in reckless disregard of the individual rights of taxpayers and is in reckless disregard of the property rights of taxpayers.

The claim is for the year 1999, 2000, and 2001 that is time barred.

Respectfully Submitted

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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-2255

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WENDELL RAY HOLLOWAY,	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	ON APPEAL FROM
	)	THE UNITED
COMMISSIONER OF INTERNAL REVENUE,	)	STATE TAX COURT
	)	
	)	
Respondent-Appellee	)	

ORDER

Before: GUY, SUHRHEINRICH, and GIBBONS, Circuit Judges.

Petitioner, Wendell Holloway, a self-employed attorney proceeding pro se, appeals from a decision of the United States Tax Court. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Petitioner was married to Tammy S. Holloway from March 21, 1988, through December 16, 2003. Petitioner and Ms. Holloway filed joint Federal income tax returns for 1999, 2000, and 2001. The joint return reflected amounts owed of $10,896.72 for 1999, $11,127 for 2000, and $11,969 for 2001. The amounts were unpaid, and the taxes shown on the returns were assessed.

In 2004, the Commissioner of the internal revenue Service (IRS) determined that Ms. Holloway was entitled to relief under equitable innocent spouse provision of the Internal Revenue Code, 26 U.S.C. § 6015(f), for the underpayments shown on the joint returns for 1999, 2000, and 2001. According to the Commissioner's records, notices were sent to petitioner before and after the decision to grant relief to Ms. Holloway.

On May 31, 2005, Revenue Officer Sheila Stewart sent to petitioner a Final Notice-Notice of Intent to Levy and Notice of Your Right to a Hearing, listing the amounts that were owed on petitioner's tax liabilities for 1999 through 2004 as totaling $81,287.21. Petitioner requested a collection due process hearing (CDP), pursuant to 26 U.S.C. § 6330, and attached to his request was a document entitled "Notice of Appeal, Challenge and Objection, Request for Production of Documents, Demand for Hearing and Judicial Review, and Counterclaim and Offset and to Dismiss Notice." In that document, petitioner asserted a number of claims, including that the Revenue Officer had failed to disclose payment plans; that the IRS had erroneously granted innocent spouse relief to Ms. Holloway; that 2003 and 2004 liabilities were not properly the subject of the levy; that petitioner was not liable for penalties and interest; that petitioner had a counterclaim and offset for property taken from him when he was a minor; and numerous vague and unsupported claims of violation of procedural regulations, due process, and equal protection.

A § 6330 hearing was eventually conducted on March 16, 2006, before Settlement Officer Danny L. Williams. There was not tape-recording or transcript of the hearing nor was one requested by petitioner prior to the § 6330 hearing date. On April 13, 2006, the Notice of Determination Concerning Action(s) Under Section 6320 and/or 6330, signed by an Appeals Team Manager, was sent to peti-

tioner. The Notice of Determination set forth petitioner's various claims and accepted only petitioner's contention with respect to 2003 and 2004. The notice analyzed petitioner's financial information and concluded that an offer-in-compromise was not a viable collection alternative because he had more than sufficient equity in his assets to pay his liability in full. The notice stated further that petitioner had been given notice of an opportunity to participate in the action on Ms. Holloway's § 6015 claim, that he had not responded, and that he had admitted receiving the notices but ignored them because contesting them might affect his child custody battle. After discussing each of petitioner's claims, the notice sustained the proposed levy action to collect the liabilities owed for 1999, 2000, and 2001.

Thereafter, petitioner filed a timely petition in the Tax Court for review of the Notice of Determination. In a memorandum opinion filed July 3, 2007, the Tax Court entered a decision in favor of the Commissioner. A subsequent motion to vacate or revise the Tax Court's decision was denied. This appeal followed.

When, as here, the validity of the tax liability is not at issue, IRS Appeals Office determinations are reviewed for an abuse of discretion. *See Olsen v. Unites States*, 414 F.3d 144, 150 (1st Cir. 2005). We have held that an administrative agency abuses its discretion where there is no evidence to support its decision, or the agency misapplies the law. *Nat'l Eng'g & Contracting Co. v. OSHA*, 928 F.2d 762, 768 (6th Cir. 1991). Upon review, we conclude that there was not abuse of discretion in this case.

Petitioner's primary argument is that the IRS erred in granting innocent spouse relief to his former spouse. The Tax Court was without jurisdiction to consider this argument. Section 6015 does not grant the Tax Court jurisdiction over petitions to review agency innocent spouse determinations when they are filed by non-electing spouses. *See*

Maier v. Comm'r, 360 F.3d 361, 375 (2d Cir. 2004). In any event, spouses who file joint returns are jointly and severally liable for the entire tax liability, which may be collected from either spouse. *Id.* Petitioner suffers no actual injury from the innocent spouse relief granted to Ms. Holloway since he would be liable for the entire deficiency as a joint filer. *See* 26 U.S.C. § 6013(d)(3). Accordingly, petitioner's argument is without merit.

Next, petitioner makes numerous allegations that the IRS failed to follow proper procedures in conducting his CDP hearing. For instance, he claims that he had "an absolute right that was guaranteed by statute" that an Appeals Officer (as opposed to a Settlement Officer) would conduct his CDP hearing. He also asserts that the IRS erred by failing to record the CDP hearing; that the IRS wrongfully refused to enter into an "compromise settlement or payment plan"; and that the Notice of Determination was signed by an appeals team manager who was not present at the hearing and therefore "would not have any way of knowing anything that occurred at the hearing." These allegations are completely without merit. *See, e.g.*, 26 U.S.C. § 6330(b) (CDP hearing to be conducted by an officer or employee of the IRS Office of Appeals); *Living Care Alternatives of Utica, Inc. v. Unites States*, 411 F.3e 621, 624 (6th Cir. 2005) (no requirement that CDP hearings be recorded); *Elmore v. Comm'r*, No. 14374-02L, 2003 WL 1987160, at *3 (T.C. Apr. 29, 2003) (Notice of Determination signed by appeals team manager is valid). Further, the IRS did not abuse its discretion by failing to accept an offer of a collection alternative from petitioner because he did not actually make such an offer. Rather, he merely urged that collection be indefinitely delayed until a wrongful death lawsuit he was handling could be resolved at some uncertain future date. Because the Appeals Office determined, based on information supplied by petitioner, that he owned sufficient assets to satisfy the tax liability at issue, a settlement

would not have been appropriate in any case. *See* Rev. Proc. 2003-71, § 4.02(2).

Finally, the Tax Court properly declined to address petitioner's claim that certain assets are exempt under 26 U.S.C. § 6334(a)(13)(B). This issue was not raised in the CDP hearing but only in petitioner's reply brief before the Tax Court. The Tax Court's review, as well as our court's review, is strictly confined to only those issues which were originally raised during the CDP hearing. *See* Treas. Reg. § 301.6330-1(f)(2), Q-F3 & A-F3; *Living Care*, 411 F.3d at 625.

Accordingly, the Tax Court's decision is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

Case No. 07-2255

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORDER

WENDELL RAY HOLLOWAY,

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

BEFORE: GUY, Circuit Judge; SUHRHEINRICH, Circuit Judge; GIBBONS, Circuit Judge;

Upon consideration of the petition for rehearing filed by the Appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Leonard green, Clerk

Issued: July 22, 2008

T.C. Memo. 2007-175

UNITED STATES TAX COURT

WENDELL RAY HOLLOWAY, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 8779-06L. Filed July 3, 2007.

Wendell Ray Holloway, pro se.

Denise A. DiLoreto and Paul J. Krazeise, Jr., for respondent.

MEMORANDUM OPINION

COHEN, Judge: This case was commenced in response to a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, sustaining a proposed levy to collect petitioner's Federal income taxes for 1999, 2000, and 2001. (In the notice of determination, a proposed levy with respect to 2003 and 2004 was not sustained.) The issue for decision is whether it was an abuse of discretion to sustain the proposed levy. Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue.

Background

Petitioner is a self-employed attorney who resided in Kentucky at the time that his petition was filed. Petitioner was married to Tammy S. Holloway (Ms. Holloway or petitioner's former spouse) from March 21, 1988, through December 16, 2003. Petitioner and Ms. Holloway filed joint Federal income tax returns for 1999, 2000, and 2001. Petitioner's joint return reflected amounts owed of $10,896.72 for 1999, $11, 127 for 2000, and $11,969 for 2001. The amounts were unpaid, and the taxes shown on the returns were assessed.

In 2004, respondent's Innocent Spouse Unit in Covington, Kentucky, determined that Ms. Holloway was entitled to relief under section 6015(f) for the underpayments shown on the joint returns for 1999, 2000, and 2001. According to respondent's records, notices were sent to petitioner before and after the decision to grant relief to his former spouse.

On May 31, 2005, Revenue Officer Sheila Stewart (Stewart) sent to petitioner a Final Notice—Notice of Intent to Levy and Notice of your Right to a Hearing, listing the amounts that were owed on petitioner's tax liabilities for 1999 through 2004 as totaling $81,287.21. Petitioner requested a section 6330 hearing. Attached to his request was a document entitled "notice of Appeal, Challenge and Objection, Request for Production of Documents, Demand for Hearing and Judicial Review, and Counterclaim and Offset and To Dismiss Notice". In that document, petitioner set forth a melange of claims, including that the Revenue Officer had failed to make available to him payment plans; that the IRS had erroneously granted relief to his former spouse; that 2003 and 2004 liabilities were not properly the subject of levy; that petitioner was not liable for penalties and interest; that petitioner had a counterclaim and offset for property taken from him when he was a

minor; and numerous vague and unsupported claims of violation of procedural regulations, due process, and equal protection. Petitioner requested a face-to-face hearing close to his residence. In a letter dated September 11, 2005, he explained his position that he had sold cattle herds during 2000 to meet the demands of his former wife, who started divorce proceedings in 1999. He stated: "It is my understanding that my ex-wife was granted innocent spouse status about July 2003 even though she is the one that spent all the money and that is the reason the two cattle herds had to be sold." Petitioner requested that the hearing be delayed because of his domestic situation and his professional responsibilities.

A hearing was subsequently set for February 9, 2006, by Settlement Officer Danny L. Williams (Williams). In a letter dated January 24, 2006, petitioner requested a delay, and a hearing was set for March 15, 2006. Prior to and during the hearing, petitioner demanded certain information concerning the grant of relief under section 6015(f) to his former spouse. Williams sent to petitioner instructions for submitting a Freedom of Information Act request. A hearing was conducted on March 15, 2006, and additional documents were sent by petitioner to Williams after the hearing. There was no tape-recording or transcript of the section 6330 hearing conducted by Williams with petitioner on March 2006, nor was one requested by petitioner prior to the section 6330 hearing date. On April 13, 2006, the Notice of Determination Concerning Collection Actions(s) Under Section 6320 and/or 6330, signed by an Appeals Team Manager, was sent to petitioner.

The notice of determination set forth petitioner's various claims and accepted only petitioner's contention with respect to 2003 and 2004. The notice analyzed petitioner's financial information and concluded that an offer-in-compromise was not a viable collection alternative because he had more than sufficient equity in his assets to pay his liability in full. The notice stated that petitioner

had been given notice of and an opportunity to participate in the action on his former spouse's section 6015 claim, that he had not responded, and that he had admitted receiving the notices but ignored them because contesting them might affect his child custody battle. After discussing each of petitioner's claims, the notice sustained the proposed levy action to collect the liabilities owed for 1999, 2000, and 2001.

Discussion

Petitioner requested and received a hearing under section 6330. Section 6330 (C) (2) provides:

SEC. 6330 (C). Matters considered at Hearing.—In the case of any hearing conducted under this section—

* * * * * * *

(2) Issues at hearing.—

(A) In general. –The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

(i) appropriate spousal defenses;

(ii) challenges to the appropriateness of collection actions;
and

(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) Underlying liability.—The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

Petitioner's liabilities were self-reported and arguably the subject of challenge at the hearing. See Montgomery v. Commissioner, 122 T.C. 1, 8 (2004). However, at no time has petitioner raised a viable challenge to the amounts assessed against him. His arguments boil down to a claim that the Internal Revenue Service (IRS) is precluded from collecting interest and penalties because of procedural errors. Although the broadly alleges issues as to the amount of tax, he had not identified or proven any errors as to the assessed amounts.

Petitioner's primary contention, which permeates several different claims of violation of "due Process", is that the IRS erroneously granted section 6015(f) relief to his former spouse. Petitioner claims that he is entitled to raise this issue under section 6330 (C) (2) (A) (i). He argues that his wife and her demands during divorce proceedings caused the unpaid liabilities and that he did not receive adequate notice before she was granted relief. He did not, however, present any persuasive or admissible evidence in support of those claims.

In the petition in this case, in numerous meritless motion, and in his posttrial briefs, petitioner has merely repeated his broad unsupported assertions that he had been denied due process of law and that the IRS has not proceeded properly. Despite the opportunity to testify at trial, petitioner declined to do so, preferring instead to submit this case on the stipulation and his written arguments.

Respondent, on the other hand, filed a motion for summary judgment based on a declaration of Williams "setting out the relevant documents contained in the administrative file from the CDP hearing". Respondent contends that:

> Testimony and/or evidence outside of the administrative record may be admissible if the administrative record does not completely disclose all of the factors considered by the agency or if there is a dispute over what happened during the hearing process. Murphy v. Commissioner, 125 T.C. 301 (2005) (new evidence regarding an irregularity in the conduct of a hearing or some defect in the record may be presented at trial, even if the record rule is applicable). See also Robinette, 439 F.3d, at 461 ("Of course, where a record created in informal proceedings does not adequately disclose the basis for the agency's decision, then it may be appropriate for the reviewing court to receive evidence concerning what happened during the agency proceedings." (citation omitted)). The administrative record in this case, however, not only completely discloses all of the factors that respondent's settlement officer considered in making his determination, but also confirms that he did not omit any relevant factor required to make such determination, and petitioner has failed to allege material facts or otherwise make a prima facie showing that any exceptions to the record rule apply.

Respondent also alleged:

> On February 10, 2005, petitioner met with respondent's Revenue Officer Sheila Stewart in respondent's Owensboro, Kentucky office to discuss petitioner's unpaid income tax liabilities. During that meeting, petitioner told Revenue Officer Stewart that he had received the prior correspondence sent to him

by respondent's Innocent Spouse Unit in Cincinnati, Ohio, regarding the Innocent Spouse relief claim filed by Tammy S. Holloway and that he did not contest or otherwise dispute such claim by her because he feared that it may affect the disposition of his child custody dispute with her in their pending divorce action.
Declaration Exhibit V.

The declaration of Williams was attached to respondent's motion, but there was no declaration from Stewart. Exhibit V was an unsigned printout of a "case history" of petitioner and Ms. Holloway. Because petitioner disputed the completeness of the administrative record and the factual assertions made, including his alleged admissions to Stewart concerning his receipt of notice of the claims of Ms. Holloway, respondent's motion for summary judgment was denied. Respondent did not call any witnesses at trial.

Although respondent repeats in the briefs the allegations of statements made to Stewart and claims that those statements are admissions and exceptions to the hearsay rule, there is no evidence that petitioner made the statements to Stewart. Petitioner denies making the statements, though not under oath. Thus, there is no admissible evidence in the record as to whether the statements were made or not made. For the reasons explained below, we conclude that the disputed admissions are irrelevant to our decision.

Respondent also argues that we are bound by the administrative record in this case, notwithstanding petitioner's disputes about omissions from and inadequacy of the administrative record. Because no testimony was offered at trial, we do not need to consider whether testimony in addition to the administrative record may be considered. The stipulation includes documents that were not included in the administrative record in this case, and respondent

has maintained a relevance objection to those documents. Because we agree with respondent's relevance objection, we need not address respondent's contention that we are limited to the administrative record.

Married taxpayers who elect to file a joint Federal income tax return are jointly and severally liable for the entire tax due for the year of the return. Sec. 6013 (d) (3). A spouse (a requesting spouse) may seek relief from joint and several liability by following the procedures established in section 6015. If the disputed liability involves nonpayment of taxes shown on a joint return, the only relief available is under section 6015(f). See Washington v. Commissioner, 120 T.C. 137, 146-147 (2003). This, the relief pursued by and granted to Ms. Holloway was relief under section 6015(f).

Under the circumstances of this case, petitioner is fully responsible for the unpaid amounts, whether or not Ms. Holloway is also responsible. Petitioner has provided neither reason nor authority supporting his assertion that relief given to Ms. Holloway should preclude the proposed levy against his assets or that his claim is the type of "spousal defense" contemplated under section 6330. Neither he nor the Court has the ability to require the IRS to collect unpaid amounts from her rather than from him. Cf. Baranowicz v. Commissioner, 432 F.3d 972 (9th Cir. 2005); Kovitch v. Commissioner, 128 T.C. 108 (2007); Maier v. Commissioner, 119 T.C. 267 (2002), affd. 360 F.3d 361 (2d Cir. 2004); Miller v. Commissioner, 115 T.C. 582, 586-588 (2000), affd. 21 Fed. Appx. 160 (4th Cir. 2001).

Petitioner contends that the failure to record the hearing and the failure to have certain documents in the form of admissible evidence make the determination "null, void, and unenforceable"; that the assignment of his hearing to a Settlement Officer rather than an Appeals Officer and the issuance of the notice of determination signed by an

Appeals Team Manager were denials of due process and render the notice "unenforceable"; and that certain IRS employees were not competent to take the steps reflected in the administrative record. Although petitioner had the option, under section 7521, to request in advance that the hearing be recorded, he has stipulated that he did not make such a request. Despite his rhetoric, petitioner has not shown any requirement of law that was not followed by the persons involved. He has not acknowledged or distinguished law contrary to his contentions. See, e.g., Living Care Alternatives of Utica, Inc. v. United States, 411 F.3d 621, 624 (6th Cir. 2005); Cox v. Commissioner, 126 T.C. 237, 246-248 (2006); Elmore v. Commissioner, T.C. Memo 2003-123.

Petitioner has not addressed his financial circumstances that were determined in the notice to preclude alternative means of collection. He raises new issues, such as claims that certain assets are exempt, only in his reply brief, and therefore those issues will not be considered. Again his arguments are not supported by evidence or authority. We need not and will not address all of them. The abuse of discretion standard requires the Court to decide whether the challenged determination was arbitrary, capricious, or without sound basis in fact or law. See Woodral v. Commissioner, 112 T.C. 19, 23 (1999). After considering petitioner's lengthy submissions and the lack of evidentiary or legal support for his claims, we conclude that he has shown neither error nor abuse of discretion in the notice of determination.

Decision will be entered for respondent.

UNITED STATES TAX COURT

WASHINGTON, DC 20217

WENDELL RAY HOLLOWAY,	)	
	)	
Petitioner	)	
	)	
v.	)	Docket No. 8779-06L
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent	)	

DECISION

Pursuant to the determination of the Court as set forth in its Memorandum Opinion (T.C. Memo. 2007-175) filed July 3, 2007, it is hereby

ORDERED and DECIDED: That respondent may proceed with the collection action as determined in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 for the taxable years 1999, 2000, and 2001 upon which this case is based.

(signed) Mary Ann Cohen

Mary Ann Cohen
Judge

Entered: Jul 6 2007

Internal Revenue Service **Treasury** Appeals Office 810 Broadway Suite 300 Nashville, TN 37203	**Department of the**
Date: April 13 2006	**Person to Contact** Danny L. Williams *Employee ID Number:* 62-09247 Tel: (615) 250-5609 Fax: 615-250-5038 Contact Hours: 7:00 a.m. – 3:30 p.m. **Refer Reply to:** AP:NAS:DLW
WENDELL R. HOLLOWAY 134 S. SCOTT STREET MADISONVILLE KY 42431	**SSN/EIN Number:** 402-54-7244 **Tax Type/Form Number:** 1040 **In Re:** Collection Due Process Hearing (Tax Court)
7004 1160 0003 7497 7468	**Tax Period(s) Ended:** 12/1999 12/2000 12/2001 12/2003 12/2004

Certified Mail

NOTICE OF DETERMINATION CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330

Dear Mr. Holloway:

We have reviewed the taken or proposed collection action for the period(s) shown above. This letter is your Notice of Determination, as required by law. A summary of our determination is stated below. The attached statement

shows, in detail, the matters we considered at your Appeals hearing and our conclusions about them.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court for a redetermination within 30 days from the date of this letter.

To get a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217, or access the Tax Court website at www.ustaxcourt.gov.

The Tax Court has a simplified procedure for an appeal under section 6330(d)(1)(A) of a determination in which the unpaid tax does not exceed $50,000. You also can get information about this procedure by writing to the Tax Court, or accessing the Tax Court website at www.ustaxcourt.gov.

The time limit for filing your petition is fixed by law. The courts cannot consider your case if you file late. If the court determines that you filed your petition with the wrong court, you will have 30 days after such determination to file with the correct court.

If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached page(s).

If you have any questions, please contact the person whose name and telephone number are shown above.

Summary of Determination

With the best information available, the requirements of various applicable law or administrative procedures have been met.

The proposed levy action for the 1999, 2000, and 2001 tax periods balances the need for the efficient collection of taxes with your legitimate concern that any collection action be no more intrusive than necessary, because the liability for 1999, 2000 and 2001 was properly determined; you have equity in assets to pay the liability in full and no viable collection alternatives were proposed. Therefore, the proposal to take levy action to collect the liability owed for 1999, 2000 and 2001 is appropriate and is sustained.

The proposed levy action for the 2003 and 2004 tax periods cannot be taken at present because the Notice of Intent to Levy as far as those two periods are concerned was issued prior to the expiration of the 10-day notice and demand period required by Internal Revenue Code section 6331(a). Therefore, the Notice of Intent to Levy as far as the 2003 and 2004 tax periods are concerned should be rescinded and a new Notice of Intent to Levy must be issued before levy action can be taken to collect the liability owed for 2003 and 2004.

Sincerely,

Gary Osterhaus
Appeals Team Manager

Attachment to 3193 Letter

Type of Tax: 1040
Periods ended: - 12/31/1999, 12/31/2000, 12/31/2001 12/31/2003 & 12/31/2004
Collection Due Process Hearing: Levy
Date of Collection Due Process Notice: 05/31/2005
Postmark Date of Collection Due Process Hearing Request: 06/29/2005
Date Collection Due Process Hearing Request Received: 06/30/2005

I. Summary and Recommendation

You requested a hearing before Appeals under the provisions of Internal Revenue Code (IRC) 6330 as to the appropriateness of the issuance of a Notice of Intent to Levy for the tax periods noted above. Based on the information contained in the Internal Revenue Service's (IRS) administrative case file and the information you provided I have determined that the proposed levy action for the periods ended 12/31/1999, 12/31/2000 and 12/31/2001 is appropriate and should be sustained but the proposal to take levy action for the periods ended 12/31/2003 and 12/31/2004 may not be taken at this time because they were incorrectly listed on the Notice of Intent to Levy prior to the expiration of the initial ten-day notice and demand for payment issued for those two years.

II. Brief Background

You are a self-employed attorney and are also involved in some farming/cattle raising operations. Your income tax returns, Form 1040, for 1999, 2000 and 2001 were filed jointly with your ex-wife reflecting a tax liability due. This liability resulted from your failure to make estimated income tax payments as required. Your ex-wife subsequently applied for and was granted innocent spouse relief under

the provisions of IRC 6015 for the liability owed for these three periods so the entire liability became your sole responsibility. The liability owed for 2003 and 2004 came from the tax returns you filed as head of household for those two periods. This tax liability also resulted from your failure to make estimated income tax payments as required. You currently owe $80,696.86 plus accruals for the tax periods in question. You submitted a copy of your Form 1040 for 2005 to Appeals that showed you had no tax liability for that period.

The Internal Revenue Service (IRS) Compliance Operating Division Revenue Officer (RO) investigating your case issued a Notice of Intent to Levy and Your Right to Request a Hearing for the tax periods in question to you on May 31, 2005.

You submitted a request for a Collection Due Process (CDP) hearing that was postmarked on June 29, 2005 and received by the IRS on June 30, 2005. In that request you indicated the following:

- There are at least 6 payment plans that were never disclosed to you and your request to pay the balance due in one-third intervals was denied.
- Innocent spouse relief was granted to your ex-wife without the benefit of due process to you.
- The amount on the notice of intent to levy is wrong and no prior notices for 2003 and 2004 were given to you so those two periods should not have been on the notice.
- You challenged the penalty and interest.
- The IRS refused to negotiate any kind of reasonable, timely settlement.
- You demanded a list of qualifications of the RO and resumes of the IRS employees involved in the innocent spouse determination.

- You noted a lien that attaches to all of your property is unreasonable.
- You claimed there is no IRS code or statute authority to issue the Notice of Intent to Levy dated 05/31/2005.
- You claimed innocent spouse determinations made by the IRS are unconstitutional.
- You stated one-half of the tax for 1999, 2000 and 2001 and all of the penalty and interest is uncollectible from you.
- You indicated you had a counterclaim/offset against the Unites States government for property taken in the Barkley Lake project when you were a minor.
- You demanded 20 days notice if the IRS intended to file a tax lien against you so you could file suit in U.S. District Court.
- You demanded calculations of penalty and interest be provided.

III. Discussion and Analysis

Applicable Law and Administrative Procedures

IRC 6330(a) provides that no levy may be made unless the Service notifies a taxpayer of the opportunity for a hearing with Appeals. If they respond within 30 days, they are entitled to a Collection Due Process (CDP) hearing with rights to a subsequent judicial review. A review of the case history and transcripts for the tax periods in question indicates you received proper notice (for the 1999, 2000 and 2001 periods) and requested a hearing within the thirty-day period.

IRC 6330(c) allows the taxpayer to raise any relevant issue relating to the unpaid tax or proposed levy at the hearing. You were provided the opportunity to raise any relevant is-

sue in an in-person hearing held with you on March 15, 2006.

IRC 6330(c)(2)(B) provides that a taxpayer may raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability. The only liability you indicated you were challenging was the decision to grant innocent spouse relief to your ex-wife. A review of the administrative case file indicates you were notified by the IRS on July 23, 2003 that your ex-wife had filed an innocent spouse claim and you were given an opportunity to participate in that process. There is no indication you responded or replied to this letter. You were notified on June 4, 2004 of the decision to grant innocent spouse relief to your ex-wife but there is no indication you filed a protest regarding that. The case history of the RO indicates you admitted to her that you had received letters from the IRS regarding the innocent spouse claim but ignored them because you thought it might affect your child custody battle. Thus, the available evidence indicates you had a prior opportunity to dispute the innocent spouse claim but you failed to do so.

IRC 6331(a) states that if any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it is lawful for the Secretary to collect such tax by levy upon all property and rights to property belonging to such person or on which there is a lien. A review of the transcripts for the 1999, 2000 and 2001 periods shows that proper notice and demand under 6331(a) was made. However, a review of the transcripts for the 2003 and 2004 periods indicates notice and demand for payment of the liability owed for those two periods was issued to you on May 23, 2005 and the only eight (8) days later those periods were included on the Notice of Intent to Levy that was issued to you on May 31, 2005. Therefore, the inclusion of

those two periods on the Notice of Intent to Levy was premature and that notice, as far as the 2003 and 2004 periods are concerned, should be rescinded and a new Notice of Intent to Levy for 2003 and 2004 must be issued before levy action can be taken to collect the liability owed on those two years.

Internal Revenue Manual section 5.8.1.1.3 and IRS Policy Statement P-5-100 states the Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. IRM section 5.8.4.4(2) defines reasonable collection potential (RCP) as the amount that can be collected from all available means, including administrative and judicial collection remedies. IRM section 5.8.4.4.1(1) provides that four components of collectibility will ordinarily be included in calculating RCP. These components include net realizable equity in assets; the amount collectible from expected future income after allowing for payment of necessary living expenses; the amount that could be expected to be collected from third parties through administrative or judicial action and assets and/or income available to the taxpayer but beyond the reach of the government. Based on the available financial information in the administrative case file the net realizable equity in your assets exceeds your liability, therefore an offer in compromise is not a viable collection alternative for resolving the liability in question.

IRM section 8.7.2.3.6(2) provides that Appeals will allow audio recordings on all types of cases that have face-to-face conferences, but in all such cases, the taxpayer must follow the requirements of IRC 7521, giving 10 days advance notice. You did not submit an advance request to record and merely inquired at the beginning of the March 15, 2006 conference if a recording was being made. You were informed no recording was being made and such recordings were not

usually made since CDP hearings are informal administrative hearings. You did not ask to record the hearing.

The Settlement Officer has had no prior involvement with respect to these liabilities.

Relevant Issues Presented by the Taxpayer

The issues raised in your request for a CDP hearing are noted above and basically involve:

- Your contention that innocent spouse relief should not have been granted and claims involving the constitutionally of the innocent spouse process.
- Your claim concerning the appropriateness of including the 2003 and 2004 tax periods on the Notice of Intent to Levy and the authority of the Service to issue such notices.
- Your claims that payment plans were not disclosed nor would the Service negotiate a reasonable settlement to resolve your liability.
- Statements concerning the filing of a tax lien.
- Challenges to the penalty and interest.
- Your claim of having a counterclaim/offset against the government for property taken when you were a minor.

During your CDP hearing you were informed that:

- The 2003 and 2004 tax periods were incorrectly listed on the Notice of Intent to Levy and the notice as far as those two periods were concerned should be rescinded and a new Notice of Intent to Levy for them would have to be issued before levy action could be taken to collect the liability owed for those periods.
- The provisions of IRC 6330(c)(2)(B) were a bar to contesting the innocent spouse aspects of the liability in question because the available evidence indicated

you had a prior opportunity to participate in the innocent spouse process but failed to take advantage of it.

You insisted during the hearing that you did not get served with due process or a petition regarding the innocent spouse determination and the granting of that relief was wrong and based on fraudulent information and you wanted to provide information to show the relief should not have been granted. You were again informed the innocent spouse determination could not be considered as noted above.

You were asked about the challenge to the penalty and interest mentioned in your CDP hearing request and if you had some specific issue regarding them. You simply indicated that the actions of your ex-wife were the cause of the tax liability as well as the penalty and interest and your inability to pay them. You did not raise any other specific issues relating to the penalty and interest or the tax liability owed for 2003 or 2004.

You were informed that a review of the transcripts for the tax periods in question indicate no Notice of Federal Tax Lien (NFTL) has yet been filed for the liability owed on them. You were also informed the IRS Compliance Division could take such action and were reminded that the CDP hearing was being held to deal with the proposed levy action.

You also inquired about getting a copy of your entire case file and you were informed that a Freedom of Information Act (FOIA) request was needed to secure that. This had previously been explained to you and you had been provided with the instructions for submitting a FOIA request.

The contention that you have a counterclaim or offset against the government for property taken for the Barkley

Lake project when you were a minor has no bearing on the liability in question or your ability to pay it as no information concerning the validity of such a claim was presented.

No other issues were raised during the hearing.

Challenges to the Appropriateness of the Collection Actions.

During your hearing you were offered the opportunity to discuss collection alternatives for resolving the liability in question and alternatives including an offer in compromise, an installment agreement and the granting of time to raise the funds to pay were discussed. You provided the following additional information concerning your financial situation:

- Your best means of resolving your liability is to close a wrongful death lawsuit you have pending in court. This suit was filed in 2002 and was set for trial in March 2006 but the opposing side secured a continuance. You indicated the case may go to mediation in May 2006 to be settled or get end up going to trial in September 2006 and that you have to borrow money to keep the case going.
- You provided a copy of your Form 1040 for 2005 that showed your adjusted gross income for the year was $1,316 and you owed no tax.

Based on the above information and my review of the Collection Information Statement (CIS) and other information in the administrative case file I determined that:

- You do not appear to have the ability to make installment payments on the liability in question because your current lack of income.
- You have substantial equity in your assets, primarily your real estate holdings.

- You have four vehicles with a combined fair market value (FMV), per your CIS, of $6,250 and there are not encumbrances against them.
- You own unencumbered real property at 134 S. Scott in Madisonville, KY with a FMV of $47,500.
- You own unencumbered real property consisting of 108 acres and a two-story home in Lyon County, KY with a combined FMV of $161,000.
- You own a home at 150 Woodland in Madisonville, KY with a FMV of $145,000 and a mortgage of $113,000.
- You own a 94 acre farm in Lyon County, KY with a FMV of $35,000 and a mortgage of $47,000.
- You own al least three other pieces of unencumbered real property in Lyon County, KY whose current FMV is unclear from your CIS.
- The net realizable equity, for offer in compromise purposes, in your unencumbered 108 acres and 2-story home in Lyon County alone is $128,800 ($161,000 x 80%). This far exceeds the amount of the liability in question and does not take into account any of the equity you have in your other assets.

Given the above, you were informed that an offer in compromise was not a viable collection alternative since you have more than sufficient equity in your assets to pay your liability in full.

You inquired about a possible installment agreement involving a 30 year payout plan or being allowed a reasonable period of time to resolve your wrongful death case to pay your liability. You were informed the granting of any time to close out your lawsuit or via an installment agreement (which your CIS indicates you have no current ability to enter into) would require the filing of a NFTL. You indicated a NFTL would keep you from borrowing money needed to continue working your legal cases and you did not want a NFTL filed. Possible options for you to raise funds to pay

your liability such as seeking loans on or selling some of your unencumbered real property were discussed but no viable collection alternative was proposed. You did ask for and were granted time until March 23, 2006 to see what you could some up with in regards to a possible mediation settlement of your wrongful death suit.

You subsequently submitted a letter to Appeals dated March 24, 2006 regarding your documentation of the hearing. In this document you indicated:

- There was no record or recording of the hearing and you specifically asked for a tape of the proceeding that is not available. As noted above, recordings of such hearings are allowed if advance notice is given by the taxpayer that they wish to record. You did not ask to record the hearing prior to or at the hearing.
- The entire Notice of Intent to Levy is defective because of the inclusion of the 2003 and 2004 tax periods. As noted above, those two periods were incorrectly included on the notice. Therefore, the notice as far as those two periods are concerned should be rescinded and a new Notice of Intent to Levy must be issued for 2003 and 2004 before levy action can be taken to collect the liability owed for those two periods. The inclusion of the 2003 and 2004 periods on the Notice of Intent to Levy does not invalidate it as far as the 1999, 2000 and 2001 tax periods are concerned.
- The innocent spouse determination was wrong. As noted above, this issue could not be considered in the CDP hearing.
- You challenged that you are not eligible for an offer in compromise and noted the IRS had settled with Willie Nelson so an offer should be available to anyone. As noted above, the acceptance of an offer is based on a taxpayer's reasonable collection potential. As also noted above, you have more than enough eq-

uity in your assets to pay the liability in question in full, therefore you do not qualify for an offer in compromise.

- You filed a request for the production of documents none of which were produced. As noted above, you were informed of the process of submitting a FOIA request to secure copies of your case file and were provided with instructions on how to accomplish that. It is currently unknown if a FOIA request has been made.
- You have a pending wrongful death case you expect to resolve later this year that you have been working on since 2002. You feel it would be inequitable for the IRS to attempt any enforcement at this time and the case has substantially increased in value in the last six months. As noted above, the granting of a reasonable period of time to resolve this case was discussed and you were informed any such extension of time would involve the filing of a NFTL to protect the government's interest in your assets. You indicated you did not want a NFTL filed. In addition, the uncertain nature as to when or if this case may be settled and the length of time it has been already been pending (since 2002) does not provide any assurances that the granting of any time to see what happens on this case may even be appropriate.

Based on all of the above, it appears the liability in question is owed and that you do not qualify for any viable collection alternatives to resolve it. An error was made by the Service in including the 2003 and 2004 tax periods on the Notice of Intent to Levy issued on May 31, 2005. Therefore, that notice as far as 2003 and 2004 is concerned should be rescinded and a new Notice of Intent to Levy must be issued for 2003 and 2004 before levy action can be taken to collect the liability owed for those two periods. However, the proposal to take levy action to collect the liability owed

for 1999, 2000 and 2001 is appropriate and should be sustained.

Verification of Legal and Procedural Requirements

As mentioned above, your request for a CDP hearing for the tax periods in question was made within 30 days of the date listed on the CDP notice. The IRS Compliance Operating Division provided verification that all statutory, regulatory and administrative requirements were met before the Notice of Intent to Levy was issued except for the expiration of the 10-day time frame required by IRC 6331(a) on the 2003 and 2004 tax periods. The liability listed on the notice was properly assessed. Notice and demand for payment was made as required.

Balancing Efficient Collection and Intrusiveness

The proposed levy action for the 1999, 2000 and 2001 tax periods balances the need for the efficient collection of taxes with your legitimate concern that any collection action be no more intrusive than necessary, because the liability, for 1999, 2000 and 2001 was properly determined; you have equity in assets to pay the liability in full and no viable collection alternatives were proposed. Therefore, the proposal to take levy action to collect the liability owed for 1999, 2000 and 2001 is appropriate and is sustained.

The proposed levy action for the 2003 and 2004 tax periods cannot be taken at present because the Notice of Intent to Levy as far as those two periods are concerned was issued prior to the expiration of the 10-day notice and demand period required by IRC 6331(a). Therefore, the Notice of Intent to Levy as far as the 2003 and 2004 tax periods are concerned should be rescinded and a new Notice of Intent to Levy must be issued before levy action can be taken to collect the liability owed for 2003 and 2004.

UNITED STATES TAX COURT
Washington, D.C. 20217
Docket # 8779-06 "L"

WENDELL RAY HOLLOWAY PETITIONER

v.

INTERNAL REVENUE SERVICE RESPONDENT

PETITIONER'S EXHIBIT 1 22P

Settlement Officer Danny Williams's notes used to conduct Collection Due Process Hearing on March 15, 2006 without file.

This hearing is a Collection Due Process hearing under section 6330 that you requested concerning the tax year of 1999, 2000, 2001, 2003 and 2004.

You submitted Form 12153 to Request the hearing. That form was signed & dated 6/29/05 by you and was postmarked on the same day. It was received by the IRS on 6/30/05.

The Form 12153 was submitted in response to the IRS Compliance Division's issuance of a Final Notice-Notice of Intent to Levy & Notice of Your Right to a Hearing dated 5/31/2005. A copy of this Notice listing the 1999, 2000, 2001, 2003 and 2004 tax periods was attached to the Form 12153.

The only periods that are going to be the subject of this hearing are tax periods listed on the Final Notice and on your Form 12153.

Before we proceed let me remind you that this is an administrative appeal. Administrative appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax law because of moral, religious, political, constitutional, conscientious or similar grounds.

I have received the letter attached to this Form 12153 as well as the information in the administrative case file transcript of the account in question and your correspondence with Appeals. Based on this I determined that all applicable law and administrative procedures have been met with the exception of the 2003 and 2004 tax periods. The tax liability for those 2 years was assessed on 5/23/2005. The initial notice and demand requested by IRC 6331(a) for these 2 periods was issued on the same day (5/23/05). The provisions of IRC 6331(a) states that if any person liable to pay any tax neglect or refuse to pay the same within 10 days after notice and demand, it shall be lawful for the Sec-

retary to collect such tax by levy. In this case, the Final Notice and Notice of Intent to Levy for the 2003 and 2004 tax period was issued on 5/31/05 which was before the expiration of the 10 day period allowed by the initial notice and demand. Therefore, the Finance Notice-Notice of Intent to Levy for 2003 and 2004 was issued in error and should be rescinded for those 2 years. If the Compliance Division decides levy action is needed for 2003 and 2004, a new Final Notice-Notice of Intent to Levy must be issued.

I also want to point out that IRC 6330(c)(2)(B) is a bar to contesting the underlying liability in a CDP hearing if the taxpayer did not receive a statutory notice of deficiency (if requested) or did not otherwise have an opportunity to dispute the tax liability. My review revealed you did have the opportunity to dispute the innocent spouse claim filed for the 1999, 2000 and 2001 tax years but there's no indication that you did so. Therefore, any issue related to the innocent spouse aspect of the liability for those 3 years cannot be considered.

The provisions of IRC 6015 are the basis for granting innocent spouse relief.

Other than the issues raised in the letter attached to the Form 12153 do you have any other issues you want to discuss?

You did dispute the penalty and interest in your letter. What is the basis of that dispute?

Do you wish to discuss collection alternatives such as an IA OR O/C for resolving the tax liability?

NOTICE OF APPEAL, CHALLENGE AND OBJECTION, REQUEST FOR PRODUCTION OF DOCUMENTS, DEMAND FOR HEARING AND JUDICIAL REVIEW, AND COUNTERCLAIM AND OFFSET AND TO DISMISS NOTICE

The undersigned Tax Payer does hereby appeal the Final Notice dated May 31, 2005 sent to the undersigned Tax Payer by Certified Mail received by a secretary. The basis of this Appeal, Challenge and Objection is as follows:

1. The threat of Levy under the facts in this case is unreasonable by the IRS and Sheila Stewart Personally. The undersigned Tax Payer has been informed that there are at least six (6) payment plans available that has never been disclosed to this Tax Payer. The undersigned Tax Payer specifically asked Shelia Stewart if he could pay one-third, one-third, and one-third (1/3, 1/3, and 1/3), of any amount he owes and she said *no*. This was an unreasonable abuse of IRS Power by her personally and individually. The IRS did not grant the Tax Payer due process of law. The Final Notice sent by Sheila Stewart and the IRS on May 31, 2005 is contrary to and not supported by Federal and State law and an arbitrary abuse of the Tax Payer's rights.
2. The IRS granted Innocent Spouse Status adverse to this Tax Payer that affects this Tax Payers property and rights without Due Process of Law. Any Adverse Complaint or Petition involving a person's property or a Tax Payer's rights and liability requires that they receive a copy of the Complaint or Petition with the facts alleged by proper notice by certified mail or other means of lawful service of process. Any determination where this is not done is null, void, and unenforceable. If enforced and property levied on, a lien placed, or a taking of property then that is an unlawful taking of property without due process of

law. The IRS is barred by its own actions. The IRS is still holding the Petition secret today. There was a Denial of Due Process to this Tax Payer by the IRS in the Innocent Spouse Determination. The IRS does not have any service of process as to Notice to the Tax Payer by Certified Mail or other valid means for service that is an absolute requirement under Federal law and State law for enforcement with due process. Any enforcement or levy by the IRS is a taking or impairment of the Tax Payers property and his right to use his property. The collection attempt by the IRS is based in part on an erroneous decision by the IRS in granting Innocent Spouse status Adverse to this Tax Payer. This error by the IRS is a complete bar against the IRS from collecting part of the amount claimed. These facts have been presented to Shelia Stewart and have been totally disregarded. Shelia Stewart and the IRS have failed to disclose and produce the petition or Statement of Facts that was used to Grant Innocent Spouse Status. Any decision by the IRS or an employee of the IRS if wrong of if obtained under false facts or without due process is subject to be set aside or vacated. The record of divorce was on file in the Hopkins Circuit Court and was a public record that the IRS could obtain and had an absolute duty to obtain. The undersigned Tax Payer owned two limousin cattle herds that he was forced to sell that is the reason these taxes were not paid and is the specific reason for any penalties and interest. The undersigned Tax Payer had to spend all of his money to meet the demands to buy another house that was done. The two (2) cattle herds were always security to pay taxes if necessary until they were sold on demand. All the money available and the

and in the Owensboro office that are involved in sending the Final Notice of Intent to Levy. This information is available to the Tax Payer under the Freedom of Information Act and if necessary as far as due process to the Tax Payer and specifically as it is necessary to file an independent lawsuit in the United States District Court Western District of Kentucky in Owensboro or in the U.S. Tax Court.

9. The Final Notice by the IRS and Shelia Stewart under the facts in this case is unreasonable, and abuse of power, is untimely and has the effect of putting the Undersigned Self Employed Tax Payer out of business if carried out. If a levy or lien is filed the undersigned tax payer asserts a right to recover damages against all involved.
10. The IRS and Shelia Stewart in attempting to asses the entire amount against the Undersigned Tax Payer is unreasonable in the time frame of the demand under the facts in this case and without due process of federal and state law.
11. There is no IRS Code, Statute, or Order that is Authority for the Final Notice dated May 31, 2005. Sending the notice dated May 31, 2005 is arbitrary and not supported by statutes, code, or law.
12. Innocent Spouse Determinations as determined by the IRS are unconstitutional and contrary to Law, due not granted due process to the adverse party and are unenforceable against the Adverse Party, the Tax Payer in this case.
13. The Internal revenue Service did not have any personal jurisdiction over this Tax Payer and did not have any subject matter jurisdiction to make any determinations. An Exparte Determination in secrecy without due process is
19. Please state the total number of cases there are involved in uncollected taxes in the Owensboro Office.

This ____ day of June, 2005.

Wendell Holloway
Attorney at Law
P.O. Box 1191
134 South Scott Street
Madisonville, Kentucky 42431
Phone: (270) 825-0032
Fax: (270) 825-4793

CERTIFICATE OF SERVICE

I certify that this Notice of Appeal, Challenge and Objection, Request for Production of Docuemtns, Demand for Hearing and Judicial Review, Counterclaim and Offset, and to Dismiss was served upon the Internal Revenue Service by mailing a true and correct copy by Certified Mail to Shelia Stewart, Inte3rnal Revenue service, P.O. Box 1797 Owensboro, Kentucky 42302-1797 on this 29 day of June, 2005.

Wendell Holloway
Social Security Number 402-57-7244

Internal Revenue Service
P.O. BOX 1797
OWENSBORO, KY 42302

Department of the Treasury

Letter Date: 05/31/2005
Social Security or Employer Identification Number 402-54-7244
IRS Employee to Contact:
SHEILA STEWART
Employee Identification Number: 61-11088
Contact Telephone Number: (270) 684-5185

CERTIFIED MAIL-
RETURN RECEIPT

WENDELL R. HOLLOWAY
134 S. SCOTT STREET
MADISONVILLE KY 42431

FINAL NOTICE
NOTICE OF INTENT TO LEVY AND NOTICE OF YOUR RIGHT TO A HEARING
PLEASE RESPOND IMMEDIATELY

Your Federal tax is still not paid. We previously asked you to pay this, but we still haven't received your payment. This letter is your notice of our intent to levy under Internal Revenue Code (IRC) Section 6331 and your right to receive Appeals consideration under IRC Section 6330.

We may file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien. Please consider this your 30 days notice.

If you don't pay the amount you owe, make alternative arrangements to pay, or request Appeals consideration within 30 days from the date of this letter, we may take your property, or rights to property, such as real estate, automobiles, business assets, bank accounts, wages, commissions, and other income. We've enclosed Publication 594 with more

information, Publication 1660 explaining your right to appeal, and Form 12153 to request a Collection Due Process Hearing with Appeals.

To prevent collection action, please send your full payment today. Make your check or money order payable to U.S. Treasury. Write your social security number or employer identification number on your payment. Send your payment to us in the enclosed envelope with a copy of this letter. The amount you owe is shown on the next page.

If you have recently paid this tax or you can't pay it, call us immediately at the telephone number shown at the top of this letter and let us know.

The unpaid amount from prior notices may include tax, penalties, and interest you still owe. It also includes any credits and payments we've received since we sent our last notice to you.

Interest-Internal Revenue Code Section 6601
We charge interest when your tax is not paid on time. Interest is computed from the due date of your return (regardless of extensions) until paid in full or to the date of this notice.

Letter 1058 (DC) (Rev. 6-2004)
Catalog number: 40488S